

Application No. 09/576,800
Attorney Docket No. 05725.0572

REMARKS

I. Status of Claims

Claims 1-13 are pending in the application. Claim 1 has been amended.

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing the pending claims in condition for allowance or at least in better condition for appeal. Applicants reserve the right to pursue these claims in a continuation application.

Applicants submit that the proposed amendment of claim 1 does not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

II. Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 1-13 are rejected as being indefinite for failing to point out and distinctly claim the subject matter which applicant regards as the invention. (*Office Action* at pp. 5-6.) The Examiner continues to reject claims 1 and 37, alleging that "extract" is indefinite. (*Id.*)

Applicants respectfully traverse this rejection and submit that the record contains sufficient evidence to show that "extract" has a well known meaning in the art, as demonstrated by the documents previously submitted by the Applicants defining "extract." Applicants respectfully note that the Examiner has not set forth any objective evidence to show that the meaning of "extract" is indefinite to one of ordinary skill in the art.

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Accordingly, Applicants respectfully submit that this rejection is in error and respectfully request withdrawal of this rejection.

III. Claim Rejection under 35 U.S.C. § 102

Claims 1-3, 7, and 10-13 are rejected under 35 U.S.C. § 102(b) as being anticipated by DE 198 10 120 C1 ("Fath et al."), as evidenced by the teachings of "Blum et al.," U.S. Patent No. 4,298,622 ("Singh"), and an abstract of JP 2000297011A ("Hikima"). (*Office Action* at pp. 3-4.) Applicants respectfully traverse this rejection.

As a preliminary matter, the Examiner had provided Applicants with a reference to "Li" instead of Blum. Li is an abstract of CN 1242416A. Because the Examiner's remarks are consistent with the Li reference, Applicants will proceed under the assumption that the rejection is based on Fath as evidenced by the teachings of Li, Singh, and Hikima.

The Examiner continues to cite Fath for disclosing a hair treatment composition containing 1.31% green tea extract, 0.5% wheat germ oil, and 1.131% sucrose. (*Id.*) The Examiner has submitted the Li, Singh, and Hikima references to allegedly show that the wheat germ oil in Fath is necessarily an extract. (*Id.*) The Examiner then alleges that a method of protecting keratinous fiber from extrinsic damage is inherent to the use of the composition taught by Fath. (*Id.*)

Applicants respectfully disagree that the Li, Singh, and Hikima references are evidence that the wheat germ oil in Fath is necessarily an extract. Nonetheless, to expedite prosecution, Applicants have amended claim 1 to delete "wheat germ" as an extract. Thus, claim 1 as amended is directed to willowherb as an extract. Because

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Fath does not disclose a willowherb extract, Applicants respectfully submit that Fath does not anticipate the claimed invention.

Accordingly, Applicants respectfully request that this rejection be withdrawn.

IV. Claim Rejections under 35 U.S.C. § 103

Claims 1-7 and 10-13 are rejected under § 103(a) as being unpatentable over Fath et al. in view of U.S. Patent No. 6,296,856 ("Pineau et al."). *Office Action* at pp. 5-6. Applicants respectfully traverse this rejection.

As discussed above, claim 1 has been amended to delete wheat germ as an extract. Because Fath and Pineau fail to teach or suggest a willowherb extract, Applicants respectfully submit that the combined teachings of Fath and Pineau fail to provide a *prima facie* case of obviousness with respect to the claimed invention. Accordingly, Applicants respectfully request withdrawal of this rejection.

V. Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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